

1 **CLEAN VERSION of each paragraph/section/claim along with clear instructions**  
2 **for entry; claims are amended.**

3 ~~11. (Once amended) The method of claim 3 wherein the fertilizer includes a soluble~~  
4 ~~phosphate compound comprising an orthophosphate compound.~~

5  
6 ~~12. (Once amended) The method of claim 10 wherein said acid is selected from the~~  
7 ~~group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight~~  
8 ~~of not more than 280 , a phosphorus-containing acid with a molecular weight of not more~~  
9 ~~than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.~~

10

11 ~~24. (Once amended) The composition of claim 16 wherein the fertilizer includes a~~  
12 ~~soluble phosphate compound comprising an orthophosphate compound.~~

13

14 ~~25. (Once amended) The composition of claim 23 wherein said acid is selected from the~~  
15 ~~group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight~~  
16 ~~of not more than 280 , a phosphorus-containing acid with a molecular weight of not more~~  
17 ~~than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.~~

18

19 ~~37. (Once amended) The method of claim 30 wherein the fertilizer includes a soluble~~  
20 ~~phosphate compound comprising an orthophosphate compound.~~

21

22 ~~38. (Once amended) The method of claim 29 wherein said acid is selected from the~~  
23 ~~group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight~~  
24 ~~of not more than 280 , a phosphorus-containing acid with a molecular weight of not more~~  
25 ~~than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.~~

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1 **Version with markings to show changes made:**

2 11. (Once amended) The method of claim 3 wherein the fertilizer includes a soluble  
3 phosphate compound [selected from the group consisting of a polyphosphate compound  
4 and] comprising an orthophosphate compound.

5  
6 12. (Once amended) The method of claim 10 wherein said acid is selected from the  
7 group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight  
8 of not more than [400] 280, a phosphorus-containing acid with a molecular weight of  
9 not more than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.

10  
11 24. (Once amended) The composition of claim 16 wherein the fertilizer includes a  
12 soluble phosphate compound [selected from the group consisting of a polyphosphate  
13 compound and] comprising an orthophosphate compound.

14  
15 25. (Once amended) The composition of claim 23 wherein said acid is selected from the  
16 group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight  
17 of not more than [400] 280, a phosphorus-containing acid with a molecular weight of  
18 not more than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.

19  
20 37. (Once amended) The method of claim 30 wherein the fertilizer includes a soluble  
21 phosphate compound [selected from the group consisting of a polyphosphate compound  
22 and] comprising an orthophosphate compound.

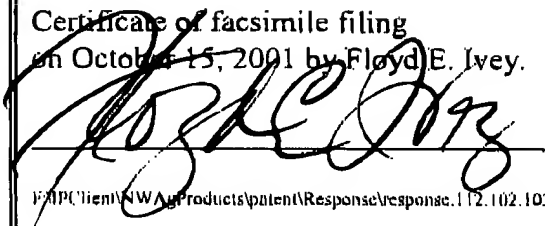
23  
24 38. (Once amended) The method of claim [36] 29 wherein said acid is selected from the  
25 group consisting of phosphoric acid, phosphorous acid, an acid with a molecular weight  
26 of not more than [400] 280, a phosphorus-containing acid with a molecular weight of

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1 not more than 300, sulfuric acid, sulfurous acid, oxalic acid, and acetic acid.  
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**Claim Rejections under 35 USC 112**

The Examiner, at page 2, states 35 U.S.C. 112 rejections for claims 27 and 28. Claims 27 and 28 have been cancelled.

The Examiner at page 2 states that claim 38 has an inconsistency relative to the claims it depends from. Claim 38 has been amended to depend from claim 29.

Your applicant has made a good faith effort to respond to each rejection and requests the Examiner to withdraw the rejections and allow the claims.

**Claim Rejection under 35 USC 102**

**Lovett:** The Examiner has rejected claims 1 - 41 under 35 U.S.C. 102(b) as being anticipated by Lovatt, Patent No. 5514200. The Examiner states that "Lovett teaches a fertilizer composition that contains organic acids such as citric and phosphoric acid or salts". Claims 1, 13 and 21 cited as well as col. 5 lines 5-15. Lovett claim 1 states in part, column 8, line 48-50 "A concentrated phosphorous fertilizer comprising a buffered composition comprising an organic acid and salts therefor and a phosphorous-containing acid selected from the group...". Lovatt claims 13 and 21 contain virtually the identical statement of the composition of matter.

The Examiner's attention is respectfully drawn to the disclosure and claims of your applicant. Your applicant's disclosure and claims differ from the Lovatt claims in a number of way: (1) Your applicant does not use "a buffered composition comprising organic acids and salts thereof" and (2) your applicant does not use an organic acid and an inorganic acid in combination. Your applicant claims only one acid in each instance.

**Parham:** The Examiner has rejected claims 16-24, 26-27, 29-37, 29-40 under 35 U.S.C. 102(b) as being anticipated by Parham, Jr. et al, Patent No. 3798020. The Examiner states that "Parham et al teaches that when micronutrients are added to

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1 phosphate solutions, they precipitate and do not supply the necessary fertilizer required by  
2 the plant. The Examiner cites Parham, Col. 1 stating in part that "The patent provides a  
3 mixture of citric acid and phosphoric acid ions in combination to overcome this  
4 problem."

5 As stated above, regarding Parham et al, "The patent provides a mixture of citric  
6 acid and phosphoric acid ions in combination to overcome this problem". The  
7 Examiner's attention is drawn to the specification and claims of your applicant. The  
8 disclosure and claims of Parham et al differs from your applicant's claims in that your  
9 applicant only uses one acid in the presence of a fertilizer. Your applicant do not disclose  
10 or claim a combination of citric and phosphoric acids and your applicant does not  
11 disclose or claim a combination of organic and inorganic acids. Your applicant discloses  
12 and claims the use of only one acid. Further, your applicant use none of the ions in the  
13 group in Parham et al at claim 1, column 8, commencing at line 5. Additionally your  
14 applicant does not disclose or claim the use of polyphosphate as is seen at claim 1.  
15 Claims referring to a polyphosphate compound have been amended: claims 11, 24 and 37  
16 have been amended as follows: "compound [selected from the group consisting of a  
17 polyphosphate compound and]comprising an orthophosphate compound."

18  
19 **Beaty and Neumiller:** The Examiner has rejected claims 16,-18, 23-25, 27-28  
20 under 35 U.S.C. 102(b) as being anticipated by Beaty, Patent No. 5634959, or Neumiller,  
21 Patent No. 3918952. The Examiner has stated that "The patents show EDTA and  
22 polyphosphate in fertilizer formulations in amounts that coincide herein." The Examiner  
23 cites Col. 4 in '959 and examples 1 and 8 for instance, in '952.

24 Your applicant respectfully responds as follows re: **Beaty:** Your applicant neither  
25 specifies nor claims use of seaweed, fish solubles, magnesium sulfate, calcium silicate or  
26 potassium. Regarding Neumiller please note that your applicant neither specifies nor  
27

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1 claims EDTA, alcohol, surfactant, urea or KCl. Your applicant's use discloses a much  
2 higher chelate concentration far outside the range of Neumiller.

3 Claims referring to a polyphosphate compound have been amended: claims 11, 24  
4 and 37 have been amended as follows: "compound [selected from the group consisting of  
5 a polyphosphate compound and] comprising an orthophosphate compound."

6 Claims 12, 25 and 38 have been amended as follows: "...molecular weight of not  
7 more than [400] 280..." which is no longer in an amount which coincides with EDTA.

8  
9 **Chen:** The Examiner has rejected claims 16, 23, 25-29, 40-41 under 35 U.S.C.  
10 102(b) as being anticipated by Chen et al, Patent No. 4336052. The Examiner observes  
11 that Chen teaches a formulation of fertilizers containing polyphosphates, phosphoric acid  
12 and sulfuric acid, citing Col. 4 and referencing claims 1-3, 7-8. It is respectfully noted  
13 that Chen claim 1 states in part "A process for preparing a stable liquid fertilizer solution  
14 which comprises: adding to a basic solution having a pH greater than 7.0 and comprising  
15 iron, ammonium, and phosphorus, wherein at least a portion of the phosphorus is in the  
16 form of a polyphosphate, the molar ratio of the phosphorus in the form of polyphosphate  
17 to iron is about..."

18 Your applicant respectfully notes that the Claim of Chen differs from your  
19 applicant's claims in two key aspects. Your applicant (1) does not use Iron and (2) does  
20 not use any polyphosphate.

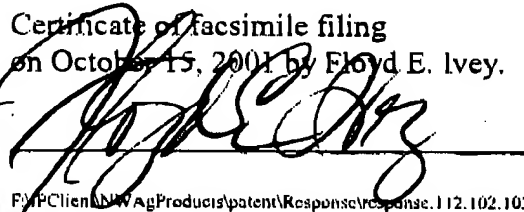
21 Claims referring to a polyphosphate compound have been amended: claims 11, 24 and 37  
22 have been amended as follows: "compound [selected from the group consisting of a  
23 polyphosphate compound and] comprising an orthophosphate compound."

24  
25 **Law regarding 35 USC 102.**

26 A rejection for anticipation under section 102 requires that each and every

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1 limitation of the claimed invention be disclosed in a single prior art reference. (*In Re*  
2 *Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); For a prior art  
3 reference to anticipate in terms of 35 U.S.C. S 102, every element of the claimed  
4 invention must be identically shown in a single reference. The elements must be arranged  
5 as in the claim under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567  
6 (Fed. Cir. 1990). Prior art anticipates an invention ... if a single prior art reference  
7 contains each and every element of the patent at issue, operating in the same fashion to  
8 perform the identical function as the patented product. "Thus, any degree of physical  
9 difference between the patented product and the prior art, NO MATTER HOW SLIGHT,  
10 defeats the claim of anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F.  
11 Supp. 308, 32 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); It is incumbent upon the  
12 examiner to identify wherein each and every facet of the claimed invention is disclosed in  
13 the applied reference. (*Ex Parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'f  
14 1990)). Since the conveyance disclosures and claims of Olney and Larson differ from  
15 that shown herein, the reference must be discounted as anticipating the present invention.

16 The applicant has demonstrated differences between features of the referenced  
17 prior art and the present invention as specified and claimed. The applicant has presented  
18 features of the present invention which are not found within the claims of either reference  
19 patent. The applicant has presented law and argument to support the contention that the  
20 rejection of claims 1-41, under 35 USC 102 should be withdrawn and now respectfully  
21 requests the Examiner to withdraw the rejections.

22  
23 **Rejection under 35 USC 103**

24 Lovatt - The Examiner has rejected claims 1-41 under 35 USC 103(a) as being  
25 unpatentable over Lovatt. Claims 27 and 28 have been cancelled. The Examiner states  
26 that "Lovett teaches a fertilizer with phosphate ions that is buffered with a multiple buffer  
27

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1 containing phosphoric acid and phosphorous acids and citrate ion" citing col. 3, lines 45-  
2 67, col. 4, lines 1-51 and col. 5, lines 5-16 as well as col. 5 lines 5-15.

3 As the Examiner has stated above "Lovett teaches a fertilizer with phosphate ions  
4 that is buffered with a multiple buffer containing phosphoric acid and phosphorous acids  
5 and citrate ion". The Examiner is respectfully directed to differences from your  
6 applicant's specification and claims as follows:

7 (1) Your applicant's invention is not "buffered with a multiple buffer containing  
8 phosphoric acid and phosphorous acids and citrate ion". Your applicant's  
9 invention is not buffered at all;

10 (2) Your applicant does not use an organic acid and an inorganic acid in  
11 combination. The Examiner will observe that a single acid is claimed;

12 The purpose of our process is to deliver soluble phosphate, by mitigating the  
13 hindrance from cations present in the soil, by the use of one acid, preferably a chelating  
14 acid, of one which itself provides phosphate.

15  
16 **Parham** - The Examiner has rejected claims 1 - 11, 14, 16-24, 26-27, 29-37, 39-  
17 40 under 35 USC 103(a) as being unpatentable over Parham, Jr. et al. Claims 27 and 28  
18 have been cancelled. The Examiner states "Parham is as discussed below. The patent  
19 does not state expressly that the fertilizer is "shielded" from metal ions by the acid.  
20 However, it would have been obvious to one of ordinary skill in the art at the time the  
21 invention was made that whether the micronutrients are in the soil or in the formulation  
22 of the fertilizer or whether the combination of Parham et al is applied to the soil or to the  
23 foliage, the purpose is the same, and the metal ions when in the acid, prevent the  
24 precipitation of the fertilizer and keep the formulation stable for use in the roots and the  
25 foliage."

26 As stated in Parham, Claim 1, from which all remaining claims depend, states "A

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1 process for sequestering and inhibiting precipitation of a **micronutrient metal cation**  
2 **selected from the group consisting of zinc, iron, copper, and manganese**, in a liquid  
3 phosphate fertilizer solution, which comprises incorporating in said solution a synergistic  
4 combination of said micronutrient metal cation, a **water-soluble polyphosphate**, and a  
5 **water-soluble citric acid salt**; the portion of said..." Claims 11 and 24 have been  
6 amended as follows: "compound [selected from the group consisting of a polyphosphate  
7 compound and]comprising an orthophosphate compound."

8  
9 Parham's invention contains three components, a micronutrient (from the group  
10 listed), a water-soluble polyphosphate, and a water-soluble citric acid salt. The Examiner  
11 is respectfully directed to the following: Your applicant's invention, simply stated,  
12 contains none of these. Your applicant's invention

13 (1) does not contain micronutrients much less any of the micronutrients within the  
14 group in Claim 1 of Parham.

15 (2) does mention an interaction with metallic cations in the soil. However, these  
16 are not being supplied as micronutrients, and further comprise a hindrance to the  
17 transport of phosphate and nothing more. Any metallic cation in the soil will  
18 become more soluble in the presence of any acid. To reject this patent on this  
19 basis would mean that Parham precludes the addition of any acid to soil, because  
20 the side-effect is that the micronutrients in the soil will become more soluble and  
21 facilitate plant uptake.

22 (3) doesn't use a polyphosphate but rather uses a monophosphate fertilizer.

23 (4) doesn't use a citric acid salt but uses citric acid.

24 Claims referring to a polyphosphate compound have been amended: claims 11, 24 and 37  
25 have been amended as follows: "compound [selected from the group consisting of a  
26 polyphosphate compound and]comprising an orthophosphate compound."

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1  
2 **Law regarding 35 USC 103.**

3 The absence of a feature similar to the feature or features of the present invention  
4 are respectfully argued as references which teach away from the disclosed and claimed  
5 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27  
6 F.3d 551 at 553(1994 cafe). In general a reference will teach away if the line of  
7 development flowing from the references disclosure is unlikely to be productive of the  
8 result sought by the applicant.

9 The Examiner has urged prior art as rendering obvious the present invention.  
10 However, there is not demonstrated teaching, suggestion or motivation to so combine the  
11 several components in the manner done by your present applicant. Such recitation of  
12 prior art does not form a basis for rejection as obvious. *C.R. Bard, Inc. v. M3 Systems,*  
13 *Inc.*, 157 F.3d 1340, 1361, 48 USPQ2d 1225, 1240 (Fed. Cir. 1998), rehearing denied &  
14 suggestion for rehearing in banc declined, 161 F.3d 1380 (Fed. Cir. 1998) ("The ultimate  
15 question is whether, from the evidence of the prior art and the knowledge generally  
16 available to one of ordinary skill in the relevant art, there was in the prior art an  
17 appropriate teaching, suggestion, or motivation to combine components in the way that  
18 was done by the inventor."); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Industries,*  
19 *Inc.*, 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a claim to be  
20 invalid for obviousness over a combination of references, there must have been a  
21 motivation to combine the prior art references to produce the claimed invention."); *Kahn*  
22 *v. General Motors Corp.*, 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert. denied,  
23 119 S. Ct. 177 (1998); *Fromson v. Anitec Printing Plates, Inc.*, 132 F.3d 1437, 1447, 45  
24 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there is no  
25 suggestion or teaching in the prior art to select from the various known procedures and  
26 combine specific steps, along with a new electrical structure, in the way that is described  
27

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1 and claimed by [the patentee]."); *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110  
2 F.3d 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the record must  
3 provide a teaching, suggestion, or reason to substitute computer-controlled valves for the  
4 system of hoses in the prior art. The absence of such a suggestion to combine is  
5 dispositive in an obviousness determination. Without a suggestion or teaching to  
6 combine, [the accused infringer's] case of obviousness suffers a significant deficiency.");  
7 *Kolmes v. World Fibers Corp.*, 107 F.3d 1534, 1541, 41 USPQ2d 1829, 1833 (Fed. Cir.  
8 1997) (the district court did not err in holding the patent in suit not invalid for  
9 obviousness; the patent concerned a cut-resistant yarn for use in making products such as  
10 gloves, which, unlike prior art yarns, did not use metallic components such as wire; the  
11 yarn includes two core strands wrapped in opposite directions around two covering  
12 strands; one core strand is fiberglass; the other core strand and the covering strands are  
13 nylon or other material; the patent's claim required, inter alia, that there be a two strand  
14 core and that the covering strands be "wrapped about said core at the rate of 8-12 turns  
15 per inch."; a prior art reference showed a yarn with a wrapping rate of 2-24 turns per inch,  
16 but the reference disclosed the use of wire, and the accused infringer "has shown no  
17 suggestion or motivation to modify the teaching of the [reference] with regard to  
18 non-metallic fibers."); *Litton Systems, Inc. v. Honeywell, Inc.*, 87 F.3d 1559, 1568, 39  
19 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one of the prior art references, alone or in  
20 combination, teach or suggest a method [specified in the patent's claims]. The prior art  
21 simply does not contain many limitations in the claimed method. Furthermore, the record  
22 discloses no teaching or suggestion to combine any of these references. The absence of a  
23 suggestion to combine is telling in an obviousness determination."); *B.F. Goodrich Co. v.*  
24 *Aircraft Braking Systems Corp.*, 72 F.3d 1577, 37 USPQ2d 1314 (Fed. Cir. 1996),  
25 discussed at N. 12.10(1) infra; *Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.*,  
26 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996); *Beachcombers, International, Inc. v.*

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1 *WildeWood Creative Products, Inc.*, 31 F.3d 1154, 1161, 31 USPQ2d 1653, 1659 (Fed.  
2 Cir. 1994) (the patent claims in suit were not obvious in view of the prior art because the  
3 art did "not remotely suggest configuring" the device as required by the claim);  
4 *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 21 F.3d  
5 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the patented invention is  
6 made by combining known components to achieve a new system, the prior art must  
7 provide a suggestion or motivation to make such a combination."). *Texas Instruments*  
8 *Inc. V. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir. 1993) for  
9 the proposition that obviousness is not supported where the references do not demonstrate  
10 to combine to produce the invention as presently disclosed.

11 The issue of viewing the present invention as a template is an inappropriate basis  
12 for rejection on the basis of obviousness. The prior art "references in combination do not  
13 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to  
14 combine the references, respondents can do no more than piece the invention together  
15 using the patented invention as a template." *Heidelberger Druckmaschinen AG v.*  
16 *Huntscho Commercial Products, Inc.*, 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993  
17 where the court held that "The motivation to combine references can not come from the  
18 invention itself."

19 The applicant respectfully submits that the references, alone and in combination,  
20 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,  
21 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*  
22 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand  
23 for the rule that decomposing an invention into its constituent elements, finding each  
24 element in the prior art, and then claiming that it is easy to reassemble these elements into  
25 the invention, is a forbidden ex post analysis. The applicant submits that it is  
26 impermissible to use the claimed invention as an instruction manual or template to piece

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1 together the teachings of the prior art so that the claimed invention is rendered obvious.  
2 The references simply do not teach to combine the requisite features of your applicant's  
3 invention. "Before the PTO may combine the disclosures of two or more prior art  
4 references in order to establish Prima Facie obviousness, there must be some suggestion  
5 for doing so, found either in the references themselves or in the knowledge generally  
6 available to one of ordinary skill in the art.(*IN RE Jones*, 958 F.2d 347, 351, 21 USPQ2d  
7 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to  
8 combine prior art references may flow, inter alia, from the references themselves, the  
9 knowledge of one of ordinary skill in the art, or from the nature of the problem to be  
10 solved. See *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need  
11 not expressly teach that the disclosure contained therein should be combined with  
12 another, see *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472, 43 USPQ2d  
13 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must  
14 nevertheless be "clear and particular." *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at  
15 1617." *Winner International Royalty Corporation v. Ching-Rong Wang*, 202 F.3d  
16 1340(CAFC 2000).

17 The applicant respectfully requests the Examiner to withdraw the 103 rejections  
18 in light of the argument, amendments and responses submitted.

19 **UNEXPECTED IMPROVED QUALITIES.** Your applicant respectfully  
20 comments on the unexpected improved qualities inherent in this disclosure and  
21 particularly in contrast to the disclosures of cited in the Examiner's Action. In contrast to  
22 Lovatt and Parham, who understand beneficial effects from adding acid combinations and  
23 buffered chelating acids to treat soils and allow said soils to more easily communicate  
24 phosphates to plant roots, your applicant's research demonstrates acid combinations or  
25 buffered chelates were not required resulting in a less expensive and simpler single acid  
26 preparation are preferred.

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1 Your present invention eliminates the complexity of both Lovatt and Parham  
2 and thus immediately is seen to eliminate expensive manufacturing expense. The present  
3 disclosure is simpler in manufacturing. Your applicant's disclosure is capable of  
4 transmitting the required phosphate to plant roots.

5 These stated facts presents direct financial savings and a reduction in  
6 manufacturing complexities. "Factors including unexpected results, new features,  
7 solution of a different problem, novel properties, are all considerations in the  
8 determination of obviousness in terms of 35 U.S.C. S 103. When such factors are  
9 described in the specification they are weighed in determining, in the first instance,  
10 whether the prior art presents a prima facie case of obviousness ... When such factors are  
11 brought out in prosecution before the PTO, they are considered in determining whether a  
12 prima facie case, if made based on the prior art, has been rebutted." *IN RE Wright*, 848  
13 F.2d 1216, 1219, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988), DISAPPROVED IN PART, *IN*  
14 *RE Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), CERT. DENIED, *Dillon v.*  
15 *Manbeck*, 111 S. Ct. 1682 (1991), discussed in CHISUMS at S 5.04[6][d]; *Reading &*  
16 *Bates Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 223 USPQ 1168  
17 (Fed. Cir. 1984); *IN RE Merchant*, 575 F.2d 865, 869, 197 USPQ 785, 788 (CCPA 1978)  
18 (stressing that there is no requirement that the "unexpected results relied upon for  
19 patentability be recited in the CLAIMS". "It is entirely proper, nevertheless, in evaluating  
20 nonobviousness, for a court to take to account advantages directly flowing from the  
21 invention patented. After all, those advantages are the foundation of that 'commercial  
22 success' which may be evidence of nonobviousness." *Preemption Devices, Inc. v.*  
23 *Minnesota Mining & Mfg. Co.*, 732 F.2d 903, 907, 221 USPQ 841, 844 (Fed. Cir. 1984).

24 The applicant has set forth arguments and law for the basis upon which prior art  
25 cited under 35 U.S.C. 103 should not result in a conclusion of obviousness for the present  
26 invention as specified and claimed. The applicant has presented features of the present

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1 invention which are not found within the claims of either reference patent. The applicant  
2 has presented law and argument to support the contention that the rejection of claims,  
3 under 35 USC 103 should be withdrawn and now respectfully requests the Examiner to  
4 withdraw the rejections.

5 **SUMMARY OF AMENDMENTS AND REMARKS**

6 The applicant has reviewed the Examiner's Action of June 20, 2001, and has  
7 addressed all objections and rejections disclosed therein. Accordingly, the applicant has  
8 made a good faith attempt to meet each objection and/or rejection as noted by the  
9 Examiner. The applicant has cancelled and amended claims. Accordingly your applicant  
10 requests the Examiner to withdraw the said objections and rejections and to allow the  
11 claims as set forth and as amended.

12 Respectfully submitted,

13   
14 FLOYD E. IVEY  
15 Registration No. 35,552

16 Telephone No. (509) 735-3581  
17  
18  
19

20 \*\*\*\*\*

21 **CERTIFICATE OF TRANSMISSION:**

22 The undersigned hereby certifies that this correspondence is being facsimile transmitted  
23 to the Patent and Trademark Office Fax No. (703) 305-3599 on October 15, 2001.

24   
Signature

25 Floyd E. Ivey  
26  
27

28 Certificate of facsimile filing  
on October 15, 2001 by Floyd E. Ivey.

Application No. 09/434,353